

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

BOSS TRUCKING, INC.,

Respondent.

**Docket No. FMCSA-2008-0189¹
(Midwestern Service Center)**

ORDER TERMINATING PROCEEDING AND CLOSING DOCKET

On March 26, 2010, the Midwestern Field Administrator for the Federal Motor Carrier Safety Administration (Claimant) submitted a Notice of Settlement and Motion to Close Docket. Claimant and Respondent entered into a Settlement Agreement that resolves the matters at issue here. The Notice of Claim served on April 1, 2008, proposed a civil penalty of \$3,600 based on five violations of 49 CFR 395.8(e), false reports of records of duty status. Under the Settlement Agreement, which was executed on March 26, 2010, and adopted as a Final Order,² Respondent agreed to pay \$2,160 in three consecutive monthly installments, with \$1,440 of the original civil penalty amount suspended, provided Respondent: (1) successfully complies with 49 CFR part 395 at the conclusion of any investigation conducted within two years from the date of execution of the Agreement; and (2) pays the non-suspended portion of the civil penalty in accordance with the terms of the Agreement.³

Paragraph 3B of the Agreement provides that discovery of an acute violation within 49 CFR part 395, or discovery of critical violations within that part at a violation rate equaling or

¹ The prior case number was WI-2008-0051-WI0888.

² Settlement Agreement, paragraph 8.


³ Under paragraph 3A of the Agreement, successful compliance with part 395 means no violations of acute regulations and/or no violations of critical regulations at a violation rate equaling or exceeding 10%.

exceeding 10%, will constitute "a breach of this agreement and will lead to further enforcement action, including notice of breach and demand for the suspended civil penalties." (Emphasis supplied). This provision is inconsistent with paragraphs 6(a) and 7 of the Agreement.

Paragraph 6(a) states that such a breach of the Agreement "may result in the reinstatement of any penalties held in abeyance...in which case FMCSA will take enforcement action..." (Emphasis supplied). Similarly, paragraph 7 states: "FMCSA may pursue any action...for enforcement of this settlement agreement, and/or for recovery of the full penalty asserted in the Notice of Claim." (Emphasis supplied).

To resolve the inconsistency between paragraph 3B on the one hand, and paragraphs 6(a) and 7 on the other, I hereby modify paragraph 3B of the Settlement Agreement to provide that violation of an acute regulation or a violation rate that equals or exceeds 10% for critical regulations may, instead of will, lead to further enforcement action. Consequently, Claimant has the discretion not to seek reinstatement of the original amount claimed in appropriate cases.⁴

THEREFORE, *It Is Hereby Ordered*, the Settlement Agreement, as modified, is the Final Order in this matter, the proceeding is dismissed, and the docket is closed.


Rose A. McMurray
Assistant Administrator

Federal Motor Carrier Safety Administration

4.15.10

Date

⁴ I am authorized to modify the Agreement under 49 CFR 386.22(c), which provides that the Assistant Administrator may accept or reject a Settlement Agreement, direct that proceedings in the case continue, or *take such other action as he or she deems appropriate*. See *In the Matter of Laura Express, Inc.*, Docket No. FMCSA-2009-0065, Order Terminating Proceeding and Closing Docket, March 12, 2010.

CERTIFICATE OF SERVICE

This is to certify that on this 16 day of April, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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